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# Investing in Ireland: The Enticement of U.S. High-Tech Industry to the Emerald Isle

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# Investing In Ireland: The Enticement of U.S. High-Tech Industry To The Emerald Isle

Jessica J. Poyner\*

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## I. INTRODUCTION

U.S. high-tech<sup>1</sup> companies considering expansion into foreign marketplaces should not overlook the promise of the European Union<sup>2</sup> (EU). The EU boasts a consumer base of approximately 370 million people<sup>3</sup> with a population approximately forty percent larger than that of the United States.<sup>4</sup>

The EU is particularly appealing to U.S. high-tech industry because the United States is able to successfully market technology considered "old" by U.S. standards as "new" in Europe since Europe's use of technology in business is approximately two years behind that of the U.S.<sup>5</sup>

Once U.S. high-tech firms decide to enter the EU marketplace through establishment of European branches of their operations,<sup>6</sup> they must then make the critical determination as to which EU country branch operations should be established. Many EU countries offer incentives to businesses looking for a European location, but for compelling reasons, the Republic of Ireland has been the top choice for many large U.S. high-tech companies.<sup>7</sup>

Formerly one of the most economically challenged countries in Europe, the Republic of Ireland<sup>8</sup> (Ireland) has made great economic progress over the last ten

1. See Jason L. Dedrick et al., *Little Engines that Could: Computing Is Small Energetic Countries*, COMM. OF THE ACM, May 1, 1995, at 21 (relating that "high-tech" investment refers to the computer, electronics, and machinery industries that utilize sophisticated or advanced technology in their processes).

2. See MARTINDALE-HUBBELL, INT'L L. DIGEST, 1996, at IRE-11 (explaining the European Union was established on November 1, 1993 and includes the European Community (EC), resulting in a change of terminology from EC to EU).

3. G. Porter Elliott, Comment, *The Acquis Communautaire and the European Union's Search for a Common Foreign and Security Policy under Title V of the Maastricht Treaty: The Accession of Austria, Finland and Sweden*, 15 GA. J. INT'L & COMP. L., 601, 603 n.2 (1996).

4. *Id.*

5. Tim Phillips, *Continental Drift (U.S. High-Tec Businesses in Europe)*, EUROBUS., July 1, 1995, at 60 available in LEXIS, Law Review Library, Allrev File. Further, Europe has an outdated telecommunications infrastructure in need of modernization which could spur an increase in the need for U.S. technology. *Id.* One of the reasons for the need of modernization is to facilitate the global information superhighway. *Id.*; see Dedrick, *supra* note 1, at 3 (discussing the importance of a sophisticated telecommunications infrastructure if information technologies are to be efficient).

6. See Phillips, *supra* note 5, at 60 (relating U.S. high-tech-companies are anxious to expand their operations into Europe as rapidly as possible in order to introduce their domestic success into foreign markets).

7. See John Hendren, *High-tech Companies in U.S. Making Old the Sod Their Turf*, CHI. TRIB., Sept. 9, 1990, at 11F (detailing in 1989, 70% of all U.S. businesses opening European branches of their U.S. operations chose Ireland).

8. See INTERNATIONAL TRADE ADMINISTRATION, U.S. DEPT. OF COMMERCE, IRELAND—OVERSEAS BUSINESS REPORTS, at 1 (1991) (detailing Ireland has been a free state since 1922 after winning independence from the United Kingdom). The Republic of Ireland should not be confused with Northern Ireland. *Id.* Northern Ireland is a part of the United Kingdom and is not an independent nation. *Id.* The Republic of Ireland does not suffer the internal strife of Northern Ireland. *Id.* Ireland is a democracy with a constitution adopted in 1937 that was strongly influenced by the Constitution of the United States. *Id.* It has a population of 3.5 million with approximately 1 million living in the greater Dublin area, the country is 300 miles long and compares in land mass to the size of West Virginia. *Id.* Ireland is mostly rolling plains in the interior surrounded by hills and low mountains. *Id.* Ireland

years.<sup>9</sup> In 1995, Ireland had Europe's fastest growing economy<sup>10</sup> and was its third best performing market.<sup>11</sup> Ireland accomplished this while maintaining one of the lowest inflation rates in Europe.<sup>12</sup> In light of this economic prosperity, Ireland's favorable conditions make it an ideal country for foreign investment.<sup>13</sup>

Agriculture in Ireland was at one time the most important sector, employing about half of its population.<sup>14</sup> Today, industry is the largest employer in Ireland.<sup>15</sup> Since the 1960s, successive Irish governments have sought to foster the industrial sector through tax relief schemes<sup>16</sup> in order to shift Ireland's agriculture-based economy into an industrial-based economy.<sup>17</sup>

Modernly, Ireland has expended its national resources and attention towards development of strong and specialized high-tech industry. One of the reasons for Ireland's interest in high-tech firms is that high-tech businesses are expected to evolve as technology changes, thereby ensuring a constant presence well into the future meaning long-term, steady employment for Irish citizens and taxable corporate income.<sup>18</sup> An example of Ireland's policy favoring high-tech industry can be found in the tax-relief scheme adopted in 1976<sup>19</sup> which specifically grants tax relief to the

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has a temperate climate with mild winters and cool summers. *Id.*

9. See generally Ireland, NATIONAL WESTMINSTER BANK COUNTRY BRIEFS, Aug. 1996, available in LEXIS, World Library, Profil File; John Brennan, *The Economy, Celtic Tiger or Pussycat?*, BUS. & FIN., June 27, 1996, at 6 (explaining the development of Ireland's economy from a struggling economy to a strong economy with low inflation rates).

10. See Alex Salmond, *Rewards of Following In Tracks of European Tiger*, THE HERALD (GLASGOW), July 10, 1996, at 18 (explaining the rapid expansion and growth of Ireland's economy).

11. David Hunt, *Pluck of the Irish*, THE OBSERVER, Mar. 16, 1996, at 17.

12. *A Gaelic Boom*, THE ECONOMIST, Apr. 27, 1996, at 58 (explaining that while in 1995 Ireland's economy grew by approximately 8% inflation rates remained low).

13. See Ireland, *supra* note 9 (relating Ireland's current economic picture is a good one because of the high rate of foreign investment and job production in Ireland's local economy).

14. U.S. CENTRAL INTELLIGENCE AGENCY, THE WORLD FACT BOOK, Ireland, at 7 (Sept. 7, 1995), available in LEXIS, World Library, Profile File.

15. *Id.*; but see *In Ireland, A Host of Problems*, N.Y. TIMES, June 4, 1984, at 8 (relating that agriculture and manufacturing employ the same number of people); see also Richard W. Stevenson, *Irish Economic Growth Lifts Hopes*, N.Y. TIMES, May 28, 1995, at 10 (explaining that the employment in agriculture is down to only 22% from 45% in the 1970's).

16. See *A Gaelic Boom*, *supra* note 12, at 58 (relating Ireland's Finance Minister, Ruairi Quinn, credits well-managed governmental policy over a successive period of years for the current strength of the Irish economy).

17. See Tadhg O'Donoghue, *Investing in Ireland*, THE IRISH TIMES, May 24, 1995, at 1 (discussing the benefits available to companies coming to Ireland); see also, Ireland, *supra* note 9 (relating that an agricultural-based economy keeps economic expansion down and unemployment up); *Republic of Ireland: Inward Investment in Ireland (IDA Ireland)*, BUS. MONITOR, Apr. 10, 1995, available in LEXIS, Europe Library, IRE File (mentioning Ireland's consistent policy towards promotion of industry).

18. See NATIONAL WESTMINSTER BANK COUNTRY BRIEFS, *supra* note 9 (discussing the importance of the high-tech industry's presence in Ireland); see also Paul Majendie, "Silicon Valley" Fails to Take Root In the Emerald Isle, REUTER BUS. REP., Mar. 10, 1993 at 10 (relating that high-tech industry brings self-sustaining growth to a country).

19. See generally Corporation Tax Act (1976) (Ireland).

computer industry<sup>20</sup> as well as various other high-tech industries. Since 1976, the Irish government has continued its policy of assistance to high-tech industry through tax relief and government grants.<sup>21</sup> This, coupled with low labor costs, and a young, educated workforce results in Ireland's enjoyment of the highest returns on investment in Europe.<sup>22</sup>

In 1995, Ireland secured twenty-three percent of all U.S. manufacturing investment in Europe, even though the country contains only one percent of Europe's population.<sup>23</sup> Ireland attracted forty percent of all U.S. overseas high-tech investment over the past twenty years.<sup>24</sup> Employment in the computer software industry alone rose from 3,000 people in 1987 to almost 12,000 in 1995,<sup>25</sup> and in 1996, Ireland was the leading location for U.S. European investment in the computer software field.<sup>26</sup>

Many of the high-tech companies that were attracted to Ireland are branches of U.S. electronics and computer industry giants<sup>27</sup> including Intel, Microsoft, IBM, Seagate, Oracle, Hewlett Packard, Dell, Apple, Novell, General Instrument, Motorola, and SCI Systems, Inc.<sup>28</sup>

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20. For purposes of this comment, "computer industry" refers to manufacture and assembly of computer hardware, software and any other computer-related components including computer services such as data processing, software development, and customer service centers.

21. John Murray Brown, *Survey of Business Locations In Europe: Moving Nearer to Ireland /Multinational Corporations Have Become Vital to the Health of the Economy*, FIN. TIMES, Oct. 24, 1995, available in LEXIS, Europe Library, Allnews File; see *supra* note 8 (discussing Ireland's drive towards recruiting computer hardware and software producers); see also Robert Batholomew, *Not Just the Luck of the Irish*, WORLD TRADE, Apr. 1996, at 74 (relating Ireland had identified the electronics industry as one of its major sectors for development).

22. Brown, *supra* note 21; see O'Donoghue, *supra* note 17, at 1 (referring to the U.S. Department of Commerce study, which estimates the average return for U.S. manufacturing investment is 25%, approximately four times the European Union's average investment return); *Ireland Chamber of Commerce in the U.S. to Hold Business Partnership Conference*, PR NEWSWIRE, Mar. 11, 1992, available in LEXIS, Europe Library, Allnews File (estimating a 29.9% return on investment in general).

23. Paul O'Kane, *Investor's Won't Be Disappointed Says IDA Chief: Republic Wins 23% of US Euro Manufacturing*, IRISH TIMES, May 24, 1995, at 8, available in 1996 WL 14682713; see *Ireland Courts Investors*, BUS. AM., Sept. 5, 1983, at 36 (relating that in Ireland, U.S. manufacturing facilities make up 360 out of a total of 800 foreign manufacturing facilities).

24. Salmond, *supra* note 10, at 18.

25. See Yvonne Healy, *Many Small Companies, Very Big Business*, IRISH TIMES, Sept. 10, 1996, at 15 (explaining the rapid expansion of the software industry in Ireland and the potential for these companies to absorb many of Ireland's unemployed workers); see also *Republic of Ireland: Inward Investment in Ireland*, BUS. MONITOR, Apr. 10, 1995, at 3 (relating the electronics and information technology sector employed an estimated 6,000 people in 1973 and by 1993 employed approximately 23,600 people).

26. *Business Climate*, POLITICAL RISK SER, Aug. 1, 1996, available in LEXIS, Europe Library, IRE File.

27. See Michael Kanellos, *Dublin to Be the Heart of Entex in Europe—Facility to Offer Systems Support*, COMPUTER RESELLER NEWS, Apr. 3, 1995, available in 1995 WL 6625963 (detailing approximately 420 U.S. computer companies have offices in Ireland).

28. See Richard Read, *Intel's Eyes Are Smiling*, PORTLAND OREGONIAN, Dec. 3, 1995, available in 1995 WL 9214096 (detailing Intel's 1.5 billion dollar expansion in Ireland); see also *Frankly Intel*, IRISH TIMES, Jan. 31, 1997, at 24 (relating Intel's Irish branch is the biggest supplier of Pentium chips in the world); Healy, *supra* note 25, at 15 (explaining Microsoft's expansion in Ireland); Paul O'Kane, *IBM Set to Bring 750 Jobs to New West Dublin Office*, IRISH TIMES, June 25, 1996, at 1 [hereinafter O'Kane, IBM] (discussing IBM's expansion in Ireland and revealing Oracle's choice to locate its European branch in Ireland); *How the IDA Swung the Seagate Coup for*

Representatives of these companies cite a variety of reasons for their choice of Ireland as a business location including the Industrial Development Agency of Ireland,<sup>29</sup> the quality of the Irish workforce,<sup>30</sup> the available tax relief,<sup>31</sup> and the overall strength of the Irish economy.<sup>32</sup>

Ireland has a vested interest in keeping a prolific foreign business environment.<sup>33</sup> Multinational corporations in Ireland are very important to its economy, accounting for fifty-five percent of manufacturing output and forty-five percent of employment.<sup>34</sup> Three out of every four jobs are indirectly attributed to foreign investment in Ireland.<sup>35</sup>

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*Clonmel*, IRISH INDEPENDENT, June 6, 1995 (relating Seagate's expansion into Ireland); *Intel's Major Plant Expansion For Ireland*, (NEWSBYTES NEWS NETWORK), Feb. 28, 1995, available in LEXIS, Europe Library, Allnews File (examining Hewlett Packard's investment in Ireland); Caroline Smith, *Ireland Gets Praised as High-Tech Heaven of Europe*, RUETER EUROPEAN COMMUNITY REP., July 25, 1994 at 1 (describing Dell's business site in Ireland); Hendren, *supra* note 7, at 11F (discussing Apple's plant in Ireland); IDA, IRELAND, ACHIEVE EUROPEAN COMPETITIVE ADVANTAGE IN ELECTRONICS (Sept. 1995) (listing major U.S. electronics companies with subsidiaries in Ireland including a description of each companies Irish facility).

29. See Dave Young, *Irish Education and Financial Enticements Draw the Multinationals—Dave Young, of Hewlett Packard, Which is to Expand Ireland, Explains Why the U.S. Computer Giant Chose Ireland as Its Base for European Operations*, IRISH TIMES, July 19, 1996, at 14 (explaining the Irish Development Agency was very helpful to the company and that Ireland's stable government with low inflation and low interest rates were attractive).

30. Hendren, *supra* note 7, at 11F. A representative of Intel cited Ireland's low corporate tax rates and generous grant incentives as reasons why Ireland had "the best deal" out of all European countries surveyed for potential expansion. *Id.* The survey included assessment of locations in the United Kingdom, Germany, France, Spain, and several other European venues. *Id.*; see also Marita Van Oldenborgh, *Market Report: Ireland*, INT'L BUS., May 1992, at 52 (relating foreign companies come to Ireland because they believe it to be the best choice); *HP to Build Printer Supplies Factory in Ireland*, NEWSBYTE NEWS NETWORK, Feb. 28, 1995, available in LEXIS, Europe Library, Curmws File (detailing Hewlett Packard's decision on Ireland was influenced by the available skilled work force, quality educational system, and favorable corporate tax structure).

31. See *Frankly Intel*, *supra* note 28, at 24 (discussing the 10% tax relief was one of the factors that Intel took into consideration when it chose Ireland as its headquarters for European operations).

32. See Young, *supra* note 29, at 14 (describing Hewlett Packard's decision to locate their European branch in Ireland due, in part, because of the healthy economic climate of Ireland).

33. See Majendie, *supra* note 18, at 10 (discussing the important significance of multinationals in Ireland and noting that multinationals are attracted to Ireland because Ireland offers the best bargain).

34. John Murray Brown, *Survey—Business Locations in Europe: A Small Competitive Edge*, FIN. TIMES, Oct. 8, 1996, at 4; see also *Foreign Firms Sold on Local Production; Dublin Has Solid Record in Luring, Keeping Companies*, NIKKEI WKLY., Mar. 28, 1992 at A-3 (explaining high unemployment in Ireland is a major contributing factor to Ireland's need for foreign capital).

35. Van Oldenborgh, *supra* note 30, at 52; see also Jackie Gallagher, *AST Reflects Computer Growth*, IRISH TIMES, Nov. 10, 1993, at 7 (relating more than 28,000 Irish citizens are employed in computer companies, with another 7,000 in software).

Ireland's membership in the European Union, beginning in 1973, along with its highly-praised Industrial Development Agency,<sup>36</sup> can be further credited to Ireland's growing reputation as an excellent site for the high-tech industry.<sup>37</sup>

This Comment analyzes Ireland as a location for a U.S. high-tech company looking to expand its operations into the European market. Part II details the various benefits available to the high-tech company doing business in Ireland which include the Industrial Development Agency of Ireland,<sup>38</sup> the Irish workforce,<sup>39</sup> Ireland's double taxation agreement with the United States,<sup>40</sup> and the tax relief available to high-tech industry, and more specifically, the computer industry.<sup>41</sup> Part III discusses the current outlook for an investment in Ireland and takes into consideration the potential drawbacks a U.S. company could face in Ireland,<sup>42</sup> and Part IV concludes that despite these potential weaknesses, Ireland still remains a good choice for the U.S. high-tech industry as a site for European-based U.S. operations.<sup>43</sup>

## II. IRELAND AND HIGH-TECH INDUSTRY

The key to Ireland's success in its attraction of large U.S. high-tech firms cannot be attributed to any one factor alone. In fact, much of Ireland's success is because it possesses multiple selling points. The Industrial Development Agency, the Irish work-force, and the available tax relief have all been cited as important factors for a U.S. high-tech company seeking a European location in which to base a European branch operation.<sup>44</sup>

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36. See Brennan, *supra* note 9, at 3 (discussing the IDA is beneficial to Ireland's economy). The IDA has an excellent reputation among foreign companies for its business location efforts and for its facilitation of government grants. *Id.*

37. See generally Van Oldenborgh, *supra* note 30, at 52 (discussing the benefits of Ireland's membership in the European Economic Community of 1973, now the European Union, and relating that Ireland's membership in the EU contributes to Ireland's wealth and stability through EU grants and further guarantee's duty-free exportation of products manufactured in Ireland); *Ireland Courts Investors*, *supra* note 23, at 36 (relating almost all U.S. goods manufactured in Ireland are exported duty-free to other EU countries); *Ireland, Mighty Midget*, *THE ECONOMIST*, June 29, 1996, at 46 (relating Ireland has received US\$29.2 billion in benefits from the EU since its membership in 1973: the funds received were mostly from the common agricultural policy and regional aid funds); Richard W. Stevenson, *Irish Economic Growth Lifts Hopes*, *N.Y. TIMES*, May 28, 1995, at 10 (explaining Ireland receives US\$1.6 billion a year subsidy from the EU that goes to a wide variety of activities from road-building to job training).

38. See *infra* notes 45-67 and accompanying text.

39. See *infra* notes 75-86 and accompanying text.

40. See *infra* notes 108-14 and accompanying text.

41. See *infra* notes 123-56 and accompanying text.

42. See *infra* notes 165-81 and accompanying text.

43. See *infra* notes 182-85 and accompanying text.

44. See *infra* note 183 and accompanying text.

### A. The Industrial Development Agency

The Industrial Development Agency (IDA) is a government-sponsored agency originally part of Ireland's Department of Industry and Commerce.<sup>45</sup> The Department of Industry and Commerce was re-named the Department of Enterprise and Employment after an agency restructuring in 1969, and the IDA became an independent agency.<sup>46</sup>

The IDA assists foreign businesses with finding plant locations, hiring necessary staff, facilitating grants and government subsidies, and helping companies meet governmental requirements.<sup>47</sup> Through this assistance, the IDA considerably eases the burden on U.S. businesses in initial administrative tasks that are necessary in any attempt to establish operations in a foreign country.<sup>48</sup>

The IDA is credited with bringing approximately 11,500 jobs to Ireland in 1995 (through foreign-owned companies) through its rigorous promotion of Ireland as an ideal manufacturing site in the United States as well as in other nations.<sup>49</sup> The IDA has been and continues to be instrumental in Ireland's ability to attract the high-tech industry<sup>50</sup> and has helped Ireland become one of the leading locations in the world for U.S. software investment.<sup>51</sup> The IDA has recognized the importance of U.S. business and has branch locations in New York, Chicago, Los Angeles, Boston, San Jose and Atlanta.<sup>52</sup>

In addition to its technical assistance, the IDA provides funding assistance through its various grant programs. The IDA gives companies grants for equipment,

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45. See *Wooing the Foreigner*, THE ECONOMIST, Apr. 9, 1977, at 13 (discussing Ireland's attempt to encourage investment in Ireland).

46. Interview with Gavan Egan, Vice President of Electronics and Engineering, IDA Ireland (Feb. 12, 1996); see *Wooing the Foreigner*, *supra* note 45, at 13 (discussing Ireland's attempt to encourage investment in Ireland).

47. Van Oldenborgh, *supra* note 30, at 52.

48. See INTERNATIONAL TRADE ADMINISTRATION, U.S. DEPT. OF COMMERCE, IRELAND—OVERSEAS BUSINESS REPORTS, at 32 (1991) (relating the IDA helps to ease the burden of administrative tasks for new businesses).

49. See *Creating Employment*, IRISH TIMES, Jan. 3, 1996, at 13 (discussing the IDA's role in decreasing the employment rate in Ireland and citing that IDA-supported companies currently total 90,000); see also O'Kane, *supra* note 23, at 8 (calling the IDA Europe's most successful industrial development agency); Brown, *supra* note 21 (relating the IDA's nomination by a prominent Irish accounting firm as the "best agency in Europe 1995"); Naomi Caine, *Eire: Freedom From Captives—IDA*, REUTER TEXTLINE REINSURANCE, Aug. 1, 1993, available in LEXIS, Europe Library, Curnws File (explaining the IDA, unlike most government run agencies, is well run and high profile).

50. See *Wooing the Foreigner*, *supra* note 45, at 13 (discussing the IDA's efforts to attract foreign companies which include spending more money on promotion, seeking out investment opportunities for potential investors, and exploring the scope of joint ventures); see also John McManus, *Irish Firms In U.S. Deals*, IRISH TIMES, June 18, 1996, at 16 (discussing the US Business Partnership Programme designed to encourage joint ventures between U.S. businessmen and their Irish counterparts).

51. See Brown, *supra* note 21 (relating the IDA has actively sought computer industry related companies to come to Ireland).

52. Interview with Gavan Egan, *supra* note 46. Upon a call to the IDA office in San Jose, one ascertains that the organization is very friendly and willing to speak with anyone interested in learning about business opportunities in Ireland. *Id.* The telephone number in San Jose, California, is (408) 294-9903.



training,<sup>53</sup> research and development, production facilities and business offices.<sup>54</sup> The IDA bases its grant decisions on a case-by-case basis.<sup>55</sup> An interested company is required to submit a three or five year business plan which details what kind of revenue it expects to generate and how many employees are projected to be hired.<sup>56</sup>

The IDA will then calculate the amount of grant aid it will give to a company by taking into account such factors as (1) the original capital outlay the company will make (2) the amount of local employment the company will generate in Ireland<sup>57</sup> (3) the company's potential for fast growth on international markets and (4) the potential for use of Ireland's raw material and supplies.<sup>58</sup> With consideration of these factors, the IDA will then calculate the amount of money to which a particular company will be entitled.<sup>59</sup>

Apart from its grant program, the IDA will also guarantee loans, subsidize interest on loans, and assist with rent for necessary factory and building sites.<sup>60</sup> The IDA is available to give advice to businesses on raising capital, hiring staff, and any subject that would be of concern to a company planning to start up operations in Ireland.<sup>61</sup>

EU law permits Ireland to give more generous grant aid for area development than it permits other member countries.<sup>62</sup> Ireland may offer up to seventy-five percent of the total capital investment to a company interested in moving to Ireland.<sup>63</sup> However, since Irish law requires the amount of foreign business grants to be calculated in proportion to the number of jobs that will be generated by the new business, Ireland does not generally subsidize a company to the full extent allowed

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53. See *Legal and Tax Aspects of Corporate Investment in Ireland—Development Agencies*, BUS. MONITOR, Jan. 26, 1995, at 3 (relating that the IDA will give up to 100% of the funds needed for employee training programs and can also include grants covering the costs of sending employees abroad for training, salaries, travel and subsistence expenses).

54. Van Oldenborgh, *supra* note 30, at 52. A representative of a San Diego-based computer and phone equipment manufacturer with a business site in Ireland related one of the benefits of doing business in Ireland was the resourcefulness of the IDA and its help with research and development grants. *Id.*; see also *Legal and Tax Aspects of Corporate Investment in Ireland—Development Agencies*, *supra* note 53 (relating grants available for research and development can be in amounts up to 50% of the approved cost of a project).

55. Interview with Gavan Egan, *supra* note 46.

56. Interview with Gavan Egan, *supra* note 46; see Read, *supra* note 28 (relating in 1994 the average IDA grant per job created was US\$19,200).

57. Interview with Gavan Egan, *supra* note 46.

58. See *Legal and Tax Aspects of Corporate Investment in Ireland—Development Agencies*, *supra* note 53 (detailing the criteria that the IDA takes into account for grant aid decisions).

59. *Id.*

60. *Id.* (describing the IDA's ancillary functions beyond facilitation of grants). Occasionally, the IDA has also participated in a joint venture with a company. *Id.*

61. *Id.*

62. See *Ireland Becomes a European Beachhead*, J. BUS. STRATEGY, May 1, 1996, available in 1996 WL 10928506 (comparing Ireland's allowable grant aid under European Union law of 75% of total capital investment to the usual 20% allowable to most EU member countries). Ireland is allowed to give more generous grant aid because of its classification as a periphery country. *Id.*

63. *Id.*

by EU law (seventy-five percent).<sup>64</sup>

Although Ireland may not give grant aid to the full extent allowed by EU law, its grant aid still remains generous. Ireland received US\$480 million in corporate taxes and the IDA gave US\$120 million back to corporations in the form of grant aid.<sup>65</sup> In addition, Ireland spends approximately US\$100 million annually in order to attract foreign firms to Ireland with half of that sum, US\$50 million, awarded to U.S. firms.<sup>66</sup>

The IDA is a tremendous resource for any U.S. business seeking to establish a branch operation in Ireland. Its informational and technical resources, economic assistance and overall function as a foreign business facilitator make it invaluable to a U.S. company interested in the establishment of operations in Ireland.<sup>67</sup>

### *B. The Irish Workforce*

The Irish people are friendly to citizens of the United States and are familiar with U.S. social customs.<sup>68</sup> The Irish are known for their hospitality and openness towards visitors.<sup>69</sup> With tourism accounting for a large percentage of the Irish economy, Irish citizens are accustomed to foreigners in their cities and countryside.<sup>70</sup>

The fact that Ireland is an English-speaking country adds to its appeal.<sup>71</sup> English eases overseas business transactions<sup>72</sup> and has relevant aspects to the computer software industry.<sup>73</sup>

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64. *Id.* (describing the method of calculating grants by IDA); see Brown, *supra* note 34, at 4 (relating the average grant per job given by the IDA in 1994 was US\$19,200).

65. Read, *supra* note 28.

66. See Bill Olsen, *Reviews Mixed for California Companies Who Gave in to the Lure of the Shamrock*, SAN DIEGO BUS. J., Apr. 28, 1986, at 35 (explaining the IDA has recruited approximately 320 U.S. companies to Ireland).

67. See *supra* notes 45-66 and accompanying text.

68. See Gene R. Harris et al., *Ireland; an Isle of Opportunity for U.S. Firms*, BUS. AM., Mar. 22, 1993, at 8 (relating Ireland and the United States enjoy a close cultural and social relationship). For many U.S. citizens, there is an ancestral link to Ireland. *Id.*; see also *Foreign Firms Sold on Local Production*, *supra* note 34 at A-3 (relating that there is a friendly environment between local and foreign industry in Ireland because of the relatively low number of locally established industries).

69. See *supra* note 14, at 7; see also Stephanie A. Hoover, *Helping Computer Companies Discover the Luck of the Irish*, CENTRAL PENN BUS. J., Feb. 1991, at 40 (relating Irish citizens are friendly towards Americans).

70. See U.S. CENTRAL INTELLIGENCE AGENCY, *THE WORLD FACT BOOK, Ireland* (Jan. 30, 1995), available in LEXIS, World Library, Profil File (relating in 1993, for the first time, Irish tourist revenues were greater than those of Scotland).

71. *Id.* (relating that Gaelic is Ireland's official language but its common use is confined to the Gaeltacht, a coastal region in the west of Ireland). *Id.* English is spoken in all other locations and is the most common language used. *Id.* Official documents are printed in both English and Irish (Gaelic). *Id.*

72. See *Ireland Chamber of Commerce in the U.S. to Hold Business Partnership Conference*, *supra* note 22 (explaining the ease which U.S. business transactions are conducted when the foreign country is English speaking).

73. See Dedrick, *supra* note 1, at 3 (considering Ireland's software programmers). In the computer software industry, English language based programs are the most popular because they generate the most sales in both the United States and Europe. *Id.* Because Irish programmers are already familiar with the computer programming

While these factors enhance the attraction of Ireland to U.S. companies, the more important inducement to U.S. high-tech business has been the young and highly trained workforce as well as employment wages that are lower than that of other European countries.<sup>74</sup>

### 1. Youth and Education

Ireland boasts a young and well-educated workforce.<sup>75</sup> In 1989, approximately twenty-seven percent of the student population was engaged in full time education<sup>76</sup> and more than fifty percent of high school students go on to higher education.<sup>77</sup> Ireland places emphasis on technology in its universities<sup>78</sup> and Irish graduates in computer programming have an excellent reputation for their high-level skills and the quality of their work.<sup>79</sup>

However, of mounting concern to the U.S. high-tech industry is that the supply of technically-qualified workers will be insufficient to satisfy the growing demand for these workers.<sup>80</sup> In an effort to increase the number of qualified workers in the

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languages employed by the United States, American companies do not need to provide any additional training to help familiarize Irish programmers with these languages. *Id.*

74. See *infra* notes 75-106 and accompanying text.

75. See Hoover, *supra* note 69 at 40. Of the 3.5 million Irish citizens, approximately 50% are under 25 years old. *Id.*; see also *Foreign Firms Sold on Local Production, Dublin Has Solid Record in Luring, Keeping Companies*, *supra* note 34, at A-3 (relating 60% of middle school graduates attend university, junior college, or vocational schools); Smith, *supra* note 28 (discussing the young and well educated workforce); Bruce Barnard, *Emerald Isle Dazzles Foreign Investors Beyond Low Taxes and Incentive Grants, Strong Supply of Educated Workers Fuels Local Growth*, J. COM., Dec. 12, 1996, at 12B (detailing Ireland has the youngest and best educated population in Europe). Ireland has more graduate scientists than any other member of the Organization for Economic Cooperation and Development other than Japan. *Id.*; Caine, *supra* note 49 (relating that Ireland spends a large amount on education). Since 1980, of Ireland's total governmental expenditures, education accounts for 18%. *Id.* But see Marie O'Halloran, *Sutherland Urges Action To Combat Excessive Statism*, IRISH TIMES, Aug. 24, 1996 (relating Ireland spends less than the European average on education in relation to the percentage of GNP spent).

76. Smith, *supra* note 28.

77. Barnard, *supra* note 75, at 12B.

78. Healy, *supra* note 25, at 15. See Hendren, *supra* note 7, at 11F (relating in the 1970s Irish universities re-tooled the science curriculum to stress technology); see also Anne Byrne, *Lots of Jobs in Europe's Silicon Valley*, IRISH TIMES, Feb. 28, 1995, at 10 (relating technology taught in universities include computer science, computer software, computer applications, information technology, electronics and engineering).

79. See *Offshore Programming Cost Appeal*, COMPUTER FIN., Mar. 1, 1996 at 8 (relating Ireland's graduates have a good reputation among foreign businesses for the quality of their work); see also Barnard, *supra* note 75, at 12B (relating that Intel was impressed the high quality of Ireland's graduates).

80. See Young, *supra* note 29, at 14 (discussing Hewlett Packard's concern that the number of university students taking courses relevant to the computer industry may not be adequate to supply their future demands). Hewlett Packard expressed some difficulty in finding workers but was eventually able to hire enough to fill the necessary positions. *Id.* Hewlett Packard cautions that Ireland should do more to encourage university students to go into the technology field. *Id.*; see also Byrne, *supra* note 78, at 10 (explaining the students with higher test scores entering the universities stay away from technology courses such as computer programming because they prefer to take courses that require higher test scores as biology and medicine). But see Smith, *supra* note 28 (relating a survey of 23 OECD countries placed Ireland first for the proportional availability of skilled labor). Ireland's

field, Ireland's Department of Education and Department of Enterprise and Employment<sup>81</sup> are working to ensure that technology is emphasized in Irish universities in hopes that Ireland will be able to generate even larger numbers of educated, highly-skilled workers for the future.<sup>82</sup>

There are indications that the number of university graduates in the computer field continue to increase.<sup>83</sup> In 1991, the total number of graduates in the computer field were fewer than 300, and by 1996, the figure had increased to 1,000.<sup>84</sup> If the number of qualified graduates continues to increase, it appears likely that the supply of technically qualified workers will be able to meet the growing demand for them. With both private and public sector encouragement toward technology in education, it seems a likely result.<sup>85</sup>

Nevertheless, concern in this area is warranted. The incongruity Ireland must face is that the more successful it becomes at attracting high-tech industry, the greater the risk that shortages of workers in the highly-skilled area will develop. Industry analysts are keeping a close watch on potential labor shortages in Ireland, but the extent to which the shortage of qualified workers develops in the future and what kind of impact it will have on wages still remains to be seen.<sup>86</sup>

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availability of labor was ahead of France, the U.S., the U.K. and Germany. *Id.*

81. See Sean Mac Carthaigh, *Computer Skills Shortage Restricts Ireland's Software Industry Growth*, IRISH TIMES, Feb. 7, 1997 at 3 (detailing the Department of Enterprise and Employment is working with the Department of Education to train more electronics and software graduates).

82. See Healy, *supra* note 25, at 15 (discussing that one of the Department of Education's goals is to increase the level of technically skilled workers in the Irish workforce). But see Mac Carthaigh, *supra* note 81, at 3 (explaining that industry specialists believe that there is a lack of governmental action towards promotion of technology in Irish universities resulting in a shortage of workers in the electronics and computer industry). Recently the Department of Education complained that it is not appropriately funded. *Id.* This has led some industrialists to question Ireland's commitment to the high-tech industry sector. *Id.* The director of the Irish Software Association, Katherine Lucey, expressed disappointment at the lack of connection between Ireland's industrial policy and education policy. *Id.* A spokesperson from a large electronics firm complained that currently, their company's growth is limited to the availability of engineers. *Id.*

83. See *infra* note 84 and accompanying text.

84. Healy, *supra* note 25, at 15. See Young, *supra* note 29, at 14 (discussing the high percentage of men in the computer industry workforce). Hewlett Packard found it was very difficult to find qualified women for recruitment. *Id.*

85. See *supra* notes 80-81 and accompanying text.

86. See Mac Carthaigh, *supra* note 81, at 3 (explaining industry specialists believe in approximately four years the electronics and computer industry will experience shortages in high-skilled laborers unless government takes decisive action). But see, Van Oldenborgh, *supra* note 30, at 52 (citing Ireland has an "abundance of skilled engineers").

## 2. Comparably Low Wages

Despite governmental efforts to create employment through foreign owned companies, Ireland still has one of the highest rates of unemployment in the EU.<sup>87</sup> This helps to keep the wage rate in Ireland down.<sup>88</sup> The average hourly compensation in Ireland is approximately US\$12 per hour which is lower than the rates of the United Kingdom, France and Germany.<sup>89</sup> The average computer programmer in Ireland earns between US\$17,000 and US\$21,000 compared with US\$33,000 to US\$51,000 paid to programmers in the United States.<sup>90</sup>

This holds promise to future employers that wages will remain comparably lower to other European countries if shortages of highly-skilled workers do not develop.<sup>91</sup> However, if a shortage of workers ensues, the salary for trained workers will likely increase as demand exceeds supply.<sup>92</sup>

Workers themselves are not completely powerless to fluctuation of wages as Ireland's labor law recognizes labor unions and the right to collectively bargain for terms and conditions of employment.<sup>93</sup> However, Irish labor unions in the foreign-owned private sector are not common, and therefore do not pose a large threat to the lower wage rates of Ireland.<sup>94</sup>

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87. See John Murray Brown, *Investment Pours Into Ireland*, FIN. TIMES, June 25, 1996, available in LEXIS, Europe Library, Allnews File (detailing unemployment is running at 12.7% of the workforce which is the second worst rate in the European Union).

88. See *A Gaelic Boom*, *supra* note 12, at 58 (discussing Ireland's work force); see also Hendren, *supra* note 7, at 11F (relating that "Ireland may have the only surfeit of programmers, systems analysts, engineers and technicians in the developed world"); *Foreign Firms Sold on Local Production, Dublin Has Solid Record in Luring, Keeping Companies*, *supra* note 34, at A-3 (detailing that Ireland's labor costs are among the cheapest in the EU, right above those of Portugal and Greece).

89. See IDA IRELAND, FACTS ABOUT IRELAND (Jan. 1996) (listing the average hourly compensation for workers in eight different EU countries). The average hourly compensation for workers in Germany is US\$27 per hour; Belgium is US\$22 per hour; Netherlands is US\$21 per hour; France is US\$17 per hour; the UK is US\$14 per hour; Spain is US\$12 per hour, and Portugal has the lowest average hourly wage at US\$4 per hour. *Id.*

90. Robert L. Scheier, *Universal Code*, PC WEEK, Apr. 3, 1995, available in 1996 WL PCNEWS; see Hugh Oram, *All Set For the Tide of Rising Salaries*, IRISH TIMES, Dec. 28, 1995, at 2 (detailing a survey on wages conducted in Ireland). The survey confirms that wages for highly-skilled workers are on the rise as the demand for the workers increases. *Id.*

91. See *A Gaelic Boom*, *supra* note 12, at 58 (discussing Ireland's work force).

92. See Healy, *supra* note 25, at 15 (relating shortages increase starting salaries for employees).

93. See *supra* notes 95-101 and accompanying text.

94. See *infra* note 102 and accompanying text.

### 3. Labor Unions

Irish labor law is based both on statutory law and judicial common law.<sup>95</sup> Irish industrial relations are structured on the theory that weighty legal regulation should be avoided.<sup>96</sup> Because of this underlying premise, trade unions and employers' associations have primarily been the source of resolution when labor disputes arise.<sup>97</sup>

Labor unions in Ireland are common.<sup>98</sup> Up to fifty-seven percent of employees that work in Ireland are trade union members.<sup>99</sup> The Irish unions participate in collective bargaining<sup>100</sup> with employers' associations and with government dispute resolution agencies.<sup>101</sup>

However, most U.S. subsidiaries are not unionized<sup>102</sup> and strike activity is low and on the decline in the private sector.<sup>103</sup> Because U.S. multinationals in Ireland have commercial influence and financial strength, Irish employees are more willing to work for these companies without the protection of labor unions.<sup>104</sup> Generally, U.S. companies pay comparably higher wages and have more flexible employment policies than other Irish companies.<sup>105</sup> This helps to discourage their employees' membership in labor unions.

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95. See Ferdinand Von Prodzynski, *Irish Labour Law and the European Community*, 11 COMP. LAB. L.J., 492, 504 n.26 (1990) (relating that judicial interpretation of the labor law statutes is of great importance to the meaning of the labor statutes and that this has given rise to a case-by-case analysis of individual disputes instead of uniformly applied labor law, thus increasing Irish dependence on labor unions to engage in the collective bargaining process).

96. *Id.* at 500 (relating Ireland's discouragement of government regulation of labor law is called "voluntarism"). Voluntarism has led employers and employees to rely on trade unions and employer's associations to resolve any conflicts instead of resorting to governmental or judicial remedies. *Id.*

97. See generally *Legal and Tax Aspects Of Corporate Investment in Ireland*, BUS. MONITOR, Jan. 26, 1995, available in LEXIS, Europe Library, IRE File (discussing trade unions in Ireland).

98. See Von Prodzynski, *supra* note 95, at 498 (relating that in Ireland, industry and labor engage in an "antagonistic" relationship which probably accounts for the high level of union membership).

99. *Id.* at 499 n.5. But see National Trade Data Bank, MARKET REPORTS, July 1991, available in Lexis, Europe File, Profil File (discussing approximately 45% of the labor force is unionized).

100. See Von Prodzynski, *supra* note 95, at 500 n.8 (relating that Ireland has no statutory definition for collective bargaining).

101. *Id.* at 500 n.8 (discussing the institutionalization of industrial relations).

102. See INTERNATIONAL TRADE ADMINISTRATION, *supra* note 8 (explaining Irish employees of U.S. branches are generally not unionized because the U.S. companies offer generous compensation); see also *Frankly Intel*, *supra* note 28, at 24 (relating that there are no unions at Intel's Irish branch).

103. See *Business Climate*, POLITICAL RISK SERV., Aug. 1, 1996, available in LEXIS, Europe Library, IRE File (discussing union strike activity is more frequent in the public sector and public enterprise including schools, the postal service, the Central Bank and transportation services). In 1996, strike activity remained low and the future prediction is that strike activity will only increase in the public sector. *Id.*; see also *Business Climate*, *supra* (relating strike activity has become less prevalent in Ireland with a downward trend in activity charted from 1987 through 1992).

104. See Von Prodzynski, *supra* note 95, at 501 (explaining U.S. multinationals in Ireland have the economic clout to influence the workforce to accept a more flexible non-union type of arrangement).

105. *Id.*

Ireland's workforce has advantages that U.S. high-tech industry can use to its benefit, whether the industry is engaged in the electronics, software, manufacture, or service sectors of the industry. The young and educated workforce, the comparably low wages, and diminutive union activity in the private sector all contribute to a desirable workforce.<sup>106</sup>

The benefit of the young and educated workforce will only be offset if labor shortages in the highly-skilled sector develop. This remains to be seen, but will be an important concern to the high-tech company enticed by Ireland's workforce.<sup>107</sup> Nevertheless, Ireland's generous tax relief should continue to lure U.S. high-tech companies.

### C. Taxation in Ireland

#### 1. Double Taxation Relief Treaty with United States

The Convention between the United States and Ireland for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income (Double Taxation Agreement) was ratified on December 20, 1951.<sup>108</sup>

This Double Taxation Agreement with the United States allows the U.S. corporation doing business in Ireland relief from paying both the Irish corporate income tax and the U.S. corporate income tax.<sup>109</sup> There are no restrictions on repatriation of capital and earnings by U.S. corporations in Ireland under this agreement.<sup>110</sup>

Under the Double Taxation Agreement, the profits of an Irish operation may be sheltered from further taxation when repatriated by a U.S. shareholder in the company.<sup>111</sup> The effect of this treaty is to reduce the tax burden on the parent of an Irish branch operation in its home jurisdiction, which helps to open avenues for efficient tax-based funding of the Irish operation.<sup>112</sup>

Ireland is making an attempt to update some of its older tax treaties and is in the process of negotiations with the United States to update the existing treaty on double taxation. An opening round of discussions was held in 1995 with a new treaty

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106. See *supra* notes 75-105 and accompanying text.

107. See *supra* note 30 and accompanying text (discussing one of the major attractions for U.S. high-tech businesses that established branch operation in Ireland was the availability of the young and educated workforce).

108. Convention for the Avoidance of Double Taxation, Sept. 13, 1951, U.S.-Ir., art. 16, 4403 CCH 32,007.

109. GLYN SAUNDERS & ERIC L. HARVEY, *TOLLEY'S TAXATION IN THE REPUBLIC OF IRELAND 1980-81* 54 (Tolley Publishing Co. Ltd. 1981).

110. *Investing in Ireland*, IRISH TIMES, May 24, 1995, available in 1996 WL IRISHT; see also Brown, *supra* note 21 (explaining there are no restrictions on profit repatriation); *Investment Gem Hidden Within the Emerald Isle*, SOUTH CHINA MORNING POST, June 22, 1993, at 4 (relating the double tax treaty between Ireland and the U.S. assures generous treatment with respect to profits accumulated in, or repatriated from, Ireland).

111. *Investing in Ireland*, *supra* note 110.

112. *Id.*

expected in the near future.<sup>113</sup> Ireland hopes that it will be able to supplement its existing tax relief with an even more comprehensive double taxation agreement to complement its existing corporate tax rate of ten percent.<sup>114</sup>

## *2. Ireland's Corporate Tax Structure*

### *a. Background*

The Department of Finance is the governmental body that maintains overall responsibility for Ireland's financial affairs and is analogous to the U.S. Treasury Department.<sup>115</sup> The administration of taxing statutes is carried out by the Revenue Commissioners, much like the Internal Revenue Service in the United States.<sup>116</sup> The principal statute governing corporate tax in Ireland is the Corporation Tax Act, 1976 as amended by the Finance Acts, 1977 to 1994 (Tax Act).<sup>117</sup>

Prior to 1976, the principle taxing statute taxed a corporation twice.<sup>118</sup> A corporation paid a standard rate of tax plus a separate tax known as "Corporation Profits Tax."<sup>119</sup> This dual system ended with the passage of the Corporation Tax Act of 1976 which levies a single tax on a corporation's profits.<sup>120</sup> A resident company of Ireland owes on a percentage of its international profits and income regardless of which country generates such profits and a non-resident company owes on a percentage of its income arising only from its Irish operations.<sup>121</sup> The standard rate of corporate tax is forty percent with a special reduced rate of ten percent for corporations engaged

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113. See John A. Moran, *Ireland Expands Tax Treaty Network, Renegotiates Existing Treaties*, 7 J. INT'L TAX'N 237 (1996) (discussing Ireland's efforts to expand its network of tax treaties including renegotiations with the U.S.). Ireland's new double taxation treaty with the U.S. will probably contain the same basic provisions, but Ireland may attempt to negotiate even more tax sparing exemptions in hopes of U.S. business expansion in Ireland which would create new job opportunities for its citizens. *Id.*

114. See Arthur Cox, *Withholding Tax and Double Taxation in Ireland*, BUS. MONITOR, Feb. 2, 1996, available in LEXIS, Europe Library, IRE File (relating the old double taxation agreement between Ireland and the U.S. still remains favorable but that Ireland hopes to enhance its provisions to encourage more foreign investment).

115. *Legal and Tax Aspects of Corporate Investment in Ireland—Corporation Tax—Income*, BUS. MONITOR, Jan. 26, 1995, at 3.

116. *Id.*

117. Corporation Tax Act, 1976 as amended by the Finance Acts, 1977 to 1994; see *Legal and Tax Aspects of Corporate Investment in Ireland—Corporation Tax—Income*, *supra* note 115 (discussing the Corporation Tax Act, 1976).

118. See James F. Bradley, *Corporate Tax Relief Schemes in the Republic of Ireland; an Evaluation of Recent Changes*, BRITISH TAX REV. 387 (1991) (discussing the background of the Irish Taxation scheme as it related to corporations).

119. *Id.*

120. *Id.* See Batholomew, *supra* note 21, at 29 (relating Ireland had to change the 1956 ESR scheme after joining the EU in 1973 because the EU held the program to be discriminatory).

121. Bradley, *supra* note 118, at 387.



in manufacturing, a term which is liberally defined.<sup>122</sup> A discussion of this special reduced rate of taxation follows.

*b. Manufacturer's Relief*

From 1956 to 1980, Export Sales Relief<sup>123</sup> (ESR) was the greatest relief from tax obligations available to a corporation manufacturing goods in Ireland. ESR granted up to fifty percent tax relief to companies<sup>124</sup> on profits derived from export sales of goods manufactured in Ireland and eventually increased that relief to one-hundred percent tax relief by the Finance Act of 1956.<sup>125</sup>

The Finance Act of 1980 was introduced to replace the 1956 ESR scheme<sup>126</sup> with a reduced ten percent tax rate on manufacturing profits to be effective from January 1, 1981 through December 31, 2000.<sup>127</sup> The Finance Act of 1990 extended the tax relief to December 31, 2010.<sup>128</sup> The companies qualified to use this special tax rate are those engaged in the manufacture of goods and need not be incorporated or even a resident of Ireland.<sup>129</sup> Therefore, a U.S. manufacturing company can enjoy this tax relief. The ten percent tax rate relates to manufacturing profits from the sale of goods on any market and is not confined to export markets.<sup>130</sup>

Similar to the 1956 ESR legislation, the definition of "manufacture" was not statutorily or legislatively defined by the 1980 Finance Act<sup>131</sup> and companies creatively attempted to classify a variety of products as "manufactured goods" in order to receive the special ten percent rate on profits derived from goods sold.<sup>132</sup> As a result, the definition of what constituted "manufactured goods" greatly expanded. In

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122. *Legal and Tax Aspects of Corporate Investment in Ireland—Corporation Tax—Income*, *supra* note 115, at 11-12.

123. Finance Act (1956) (Ireland).

124. "Companies" and "corporations" have the same meaning in this comment and are used interchangeably.

125. See Bradley, *supra* note 118, at 389 (explaining that the definition of "goods" was widened over time in order to include goods that were not normally classed as manufactured goods). Examples of such "manufactured goods" were mushrooms grown in the state, milk products, and fish produced on a farm. *Id.* Authorities used the liberal meaning of "manufactured goods" to their advantage in attempting to promote foreign investment to stimulate domestic employment. *Id.*

126. See Batholomew, *supra* note 21 (explaining that EU law held the ESR scheme to be discriminatory).

127. Finance Act of 1980 §§ 38-51 (Ireland).

128. Finance Act of 1990 § 41 (Ireland).

129. See Bradley, *supra* note 118, at 389 (detailing a company may benefit from this tax rate even though the company is not a resident of or incorporated in Ireland). If a subsidiary (a U.S. company incorporated in Ireland), it must be a 90% subsidiary of another company. *Id.* at 391.

130. *Id.* at 393.

131. *Legal and Tax Aspects of Corporate Investment in Ireland—Corporation Tax—Income*, *supra* note 115, at 12.

132. See Bradley, *supra* note 118, at 394 (relating that because manufacture is not statutorily defined, companies were attempting to extend the meaning of manufacture beyond the normal meaning associated with the word).

response, the Finance Act of 1990 limited the meaning of manufactured goods,<sup>133</sup> while still keeping the overall definition quite broad when compared with the common or familiar usage of the word "manufacture." The broad test to determine whether something constitutes a "manufactured good" is whether the final product is distinct from the materials used in the process.<sup>134</sup>

In *Charles McCann v. S. O'Culachain*<sup>135</sup> Ireland's Supreme Court<sup>136</sup> ruled that for purposes of the term "manufacture" unripened bananas that were shipped into Ireland and then subject to an artificial ripening process in special ripening rooms did constitute manufacture because it converted the raw goods (unripened bananas) into a commercially different product (ripe bananas).<sup>137</sup> In handing down its decision the Supreme Court reversed the High Court ruling which previously held this process was not manufacture because ripening bananas does not comport with the ordinary and popular meaning of "manufacture."<sup>138</sup> Noticeably, the Supreme Court did not take popular meaning into account in reaching its decision in this case.<sup>139</sup>

In *D. O Loachda v. Johnson and Johnson*<sup>140</sup> the High Court<sup>141</sup> set forth a supplemental test to aid in the attempt to classify goods as manufactured for purposes of the ten percent corporate tax.<sup>142</sup> The court considered (1) what the goods are, (2) how they appear, (3) what qualities they possess, (3) and whether an ordinary person, without knowledge as to how the actual process was carried out, would look at the

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133. See Finance Act of 1990 § 41(5) (Ireland) specifically excluding:

- (i) dividing, purifying, drying, mixing, sorting, packaging, branding, testing or applying any other similar process to a product, produce or material that is acquired in bulk so as to prepare that product, produce or material for sale or distribution,
- (ii) applying methods of preservation, pasteurization or maturation or other similar treatment to any foodstuffs, or any combination of such processes,
- (iii) cooking baking or otherwise preparing food or drink for human consumption which is intended to be consumed,
- (iv) improving or altering any articles or materials without imposing on them a change in their character,
- (v) repairing, refurbishing, reconditioning, restoring or other similar processing of any articles or materials, or any combination of such processes.

*Id.*

134. *Legal and Tax Aspects of Corporate Investment in Ireland—Corporation Tax—Income*, *supra* note 115, at 12.

135. *Charles McCann v. S. O'Culachain* (Inspector of Taxes) [1986] I.R. 196.

136. See *Country: Ireland*, KALEIDOSCOPE, Feb. 20, 1995, available in LEXIS, World Library, Profil File (explaining the Supreme Court heads the Irish Judicial System and consists of six justices including one chief justice). The Supreme Court is the highest court in Ireland and hears appeals from High Court decisions. *Id.* The High Court consists of a president and 15 judges and has full jurisdiction in both civil and criminal cases. *Id.* Below the High Court are circuit courts and district courts. *Id.* The High Court hears appeals from the circuit courts, and the circuit courts hear appeals from the district courts. *Id.*

137. *Id.*

138. *Id.*

139. *Id.*

140. *O Loachda* (Inspector of Taxes) v. *Johnson and Johnson* (Ireland) Ltd. [1991] 2 I.R. 287.

141. See *COUNTRY: IRELAND*, *supra* note 136 (explaining that after the Supreme Court, the High Court is the next highest court).

142. *O Loachda*, [1991] 2 I.R. 287.

goods in question as manufactured. In this case, the defendant was engaged in the production of nappy liners<sup>143</sup> through a process where a pre-purchased bale of material was subject to a cutting, folding and packaging process, performed by a sophisticated machine.<sup>144</sup> The Court pointed to the fact that the process performed by the machine enhanced the value of the fabric by seventy-percent and that the end product was commercially different from the original bale of fabric.<sup>145</sup> The fact that the process of cutting down material already purchased did not bring about a change in the raw material and did not, in itself, prevent the process from being classified as "manufacturing."<sup>146</sup> The court concluded that an ordinary person, when considering the packaged cloth, would consider it to be manufactured.<sup>147</sup>

When applying the test for "manufacture" articulated in the cases above, manufacture in the high-tech industry can apply to any process of manufacture where the end product differs from the beginning.<sup>148</sup> Examples are production or assembly of hardware, software, or electronic and computer components. However, since 1984, "manufacture" can also apply to computer services, a more difficult reconciliation with the universally understood meaning of "manufacture."<sup>149</sup>

In the Finance Act, 1984 the manufacturer's relief tax was made applicable to computer services.<sup>150</sup> Computer services is defined as data processing services and software development services<sup>151</sup> and was further expanded in 1989 by the Finance Act of 1989 to include technical or consultancy services which relate to data processing or software development.<sup>152</sup>

The Finance Act of 1990 even further extended the scope of computer industry-related activities that qualifies for the manufacturer's relief of ten percent. It broadened the scope of the tax relief to include the remanufacture and repair of computer equipment or subassemblies where such equipment or subassemblies were originally manufactured by that company or a connected company.<sup>153</sup> This illustrates an even more liberal use by the Irish legislature, the Oireachtas,<sup>154</sup> of the word

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143. A nappy liner is a type of domestic cleaning cloth. *Id.*

144. *O Loachda*, [1991] 2 I.R. 287.

145. *Id.*

146. Manufacture of toothpicks from trees and confetti from paper were used by the Court as examples of manufacture that do not bring about a change in the raw materials used in the process but which would be considered "manufacture" for the purposes of the 10% tax relief. *Id.*

147. *Id.*

148. *Charles McCann v. S. O'Culachain (Inspector of Taxes)* [1985] I.R. 298.

149. Finance Act of 1984 § 45(b) (Ireland).

150. *Id.*

151. *Id.*

152. Finance Act of 1989 § 22(b) (Ireland).

153. Finance Act of 1990 § 41(b) (Ireland).

154. See *Legal and Tax Aspects of Corporate Investment in Ireland*, *supra* note 115, at 3 (explaining the Irish legislature, the Oireachtas, is a bi-cameral legislature composed of the Dail, which assumes the principle legislative role and the Seanad, which assumes a more advisory role).

“manufacture” in that a broken computer is deemed “manufactured” when simply repaired.<sup>155</sup>

Programming, creation of new computer technologies, computer assembly, data processing, hardware manufacture, software manufacture and customer technical or consultancy services are all entitled to the ten percent manufacturer’s tax relief.

Given Ireland’s liberal interpretation of manufacture, a U.S. computer business is likely to be able to justify almost every computer related activity that it engages in as “manufacturing” and thereby receive the ten percent manufacturer’s relief.

In conclusion, the Finance Act of 1980 as amended by the Finance Act of 1984, 1989 and 1990, ensure that most aspects of a high-tech company doing business in Ireland will be deemed “manufacturing of goods.” This confirms that participants will receive a reduced ten percent corporate income tax rate for manufacturing activities until the year 2010.<sup>156</sup>

*c. Determining Residence vs. Non-Residence for Purposes of Assessing Corporate Tax Liability*

Irish tax law distinguishes between resident and non-resident companies doing business in Ireland.<sup>157</sup> A non-resident company is only liable for the applicable corporation tax on income arising through that particular U.S. branch in Ireland.<sup>158</sup>

Residency is ultimately a question of fact decided on a case-by-case basis with the determinate factor being where the central management and control lies, including the place where the directing authority of the company is exercised.<sup>159</sup>

Branch offices of U.S. firms will most certainly be classified as a non-resident for purposes of determining Irish corporate tax liability and therefore not be subject to tax on worldwide profits.<sup>160</sup> In order for a corporation to be taxed as a resident of

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155. But note, that arguably, a company engaged in repair of a computer converts the good (here, the unrepaid computer) into a commercially different product (a repaired computer) which is distinctly different from the original (the unrepaid computer), thus meeting the broad test of *Charles McCann v. S. O’Culachain (Inspector of Taxes)* [1985] I.R. 298.

156. See Van Oldenborgh, *supra* note 30, at 52 (comparing Ireland’s tax rate to the average corporate tax rate of thirty-three percent in Great Britain).

157. *Legal and Tax Aspects of Corporate Investment in Ireland—Corporation Tax—Income*, *supra* note 115.

158. See Ann Corrigan, LLM, *Take Advantage of The Benefits From Ireland*, INT’L TAX REP., Aug. 1991, available in LEXIS, Europe Library, IRE File (detailing international tax planning opportunities with a discussion of the benefit of non-residency in Ireland for tax planning purposes).

159. See Ambrose Loughlin, *Ireland Relies on Case Law Interpretation*, INT’L TAX REV., Jan. 1996 at 48 (discussing that central management and control lies where the ultimate directing authority is effected). This will usually be where the board of directors meet and make important policy and business decisions regarding the company. *Id.*

160. See *Legal and Tax Aspects of Corporate Investment in Ireland*, *supra* note 115, at 3 (explaining that when a U.S. business chooses to incorporate its operation in Ireland using Irish incorporation laws, it operates as a subsidiary). A U.S. subsidiary is considered a resident for tax purposes because it is managed and controlled within Ireland. *Id.* The taxable profits related to manufacture would be taxed at the 10% rate and non-manufacturing income would be taxed at the standard corporate rate of 40%. *Id.*

Ireland, the U.S. parent company would likely have to make a conscious decision to base its central control and management in Ireland.<sup>161</sup> Therefore, there is little danger that a U.S. corporation would inadvertently be classified as a resident of Ireland for taxation purposes because, in most cases, the U.S. corporation conducting Irish operations will reserve its management and control over the entire corporation to the United States.<sup>162</sup>

The tax relief available to the high-tech industry in Ireland is the lowest in Europe.<sup>163</sup> Ireland's commitment to the high-tech industry has been fostered through numerous government administrations and Ireland consistently reaffirms its commitment to high-tech industry and its promotion in Ireland.<sup>164</sup>

There are sufficient grounds to surmise Ireland will continue to foster a tax environment conducive to U.S. high-tech firms in the future.

### III. FUTURE OUTLOOK FOR HIGH-TECH INVESTMENT IN IRELAND

Ireland's high unemployment rate and young population continue to be of utmost importance to the government.<sup>165</sup> Employment growth will depend on Ireland's success at maintaining a business-friendly environment for companies that are presently there and for foreign companies looking for an ideal business site.

U.S. high tech firms with branches located in Ireland generally report excellent results. Dell, Intel, Microsoft, and Sun Microsystems all reported profits from their Irish operations.<sup>166</sup>

An informal survey of U.S. computer firms established in Ireland said that the overall experience in Ireland had been a positive one<sup>167</sup> and in 1996 IBM announced it will expand its Irish operations with a new customer support office.<sup>168</sup> Similarly, U.S. computer company Gateway 2000 announced an expansion that will make it

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161. See *supra* note 156 and accompanying text.

162. But see *supra* note 160 (relating that a subsidiary would be classified as a resident for tax purposes because management and control over that particular corporation would be based in Ireland).

163. See Pete Barlas, *ReSound Latest Tech Manufacturer to Expand to Ireland*, BUS. J. (San Jose), May 16, 1994, at 6 (discussing the lowest rate in Europe for manufacture is Ireland's 10% rate and that Silicon Valley is losing its high-tech manufacturer's to other locations such as Ireland).

164. See *supra* notes 23-74 and accompanying text (discussing Ireland's attempts to lure U.S. business to Ireland).

165. See *Quinn Says He Will Put Job Creation At Top Of EU Agenda*, IRISH TIMES, May 25, 1996, at 7 (relating the Irish EU President intends to put job creation at the top of his agenda).

166. See Cliff Taylor, *Business This Week*, IRISH TIMES, Oct. 20, 1995, at 3 (explaining Intel's quarterly profits increased by 41%, the earnings of Microsoft increased by 58%, and Sun Microsystems doubled their net income). Apple and IBM reported losses. *Id.* However, IBM's loss can be attributed to IBM's write-offs connected with its purchase of Lotus. *Id.* Apple's woes can be attributed to the fact that Apple has suffered a worldwide lapse in market sales. *Id.*; see also *Dell Reports Record Results for Quarter*, IRISH TIMES, Aug. 15, 1996, at 15 (relating Dell's after-tax profits for a three month period rose by 58% to U.S.\$103,000,000.)

167. See Olsen, *supra* note 66, at 35 (providing that while one company cited training the workforce as a negative factor most interviewed showed satisfaction with Ireland as a business location).

168. O'Kane, *IBM*, *supra* note 28.

one of the largest private sector employers in Ireland<sup>169</sup> and Intel announced plans to expand its chip production facility which will make it Europe's largest chip fabrication plant.<sup>170</sup> These large expansions represent U.S. high-tech industry's approval of Ireland as a business site and places confidence in Ireland that it will be a beneficial site in the future.

However, there still remain two areas of concern to the U.S. high-tech firm considering location in Ireland. The first is the possible shortage of highly-skilled workers.<sup>171</sup> Critics have been vocal in this area with some expressing concern that the government has been slow to react to the problem.<sup>172</sup> Others have cited the growing number of graduates in the field and predict that supply will be able to meet demand.<sup>173</sup> Whatever the outcome, the company that is able to locate in Ireland before the potential decrease in supply will benefit from early action.

The second possible concern is the ten percent corporate tax is set to expire in the year 2010.<sup>174</sup> The Irish government realizes the role the ten percent tax rate plays in attracting high-tech firms and is already discussing how to replace it.<sup>175</sup> The IDA reports that the new tax rate will likely be announced by 1999, but has not detailed what the tax will be.<sup>176</sup> The impending expiration of the ten percent tax rate in 2010 again underscores the point that for companies considering Ireland, timing is the key to maximum utilization of the low tax rate through 2010.

Economists believe that Ireland will continue to possess economic strength into the future.<sup>177</sup> This optimism may be offset by the fact that because of Ireland's success, the EU structural funds received by Ireland are due to expire in the year 1999.<sup>178</sup> But economists believe that by 1999 Ireland's infrastructure will at that time be largely in place and will therefore be able to economically sustain itself in the face

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169. Paul O'Kane, *Business is Still Booming*, IRISH TIMES, May 17, 1996, at 3 [hereinafter O'Kane, *Business*].

170. See *Intel's Major Plant Expansion For Ireland*, *supra* note 28 (discussing Intel's plan to expand its Irish operation in Leixlip, Ireland).

171. See *supra* note 86 and accompanying text (discussing the potential that a shortage in technically qualified workers will develop in the next four years).

172. See Mac Carthaigh, *supra* note 81, at 3 (criticizing Ireland's slow reaction in responding to a potential lack of highly-skilled workers). The article explains that lack of governmental action has held Ireland back from growth in the computer industry. *Id.*

173. See Healy, *supra* note 25, at 15 (acknowledging that certain sectors could experience labor shortages but that universities and government have been working successfully to increase the rate at which these workers are trained at the university level).

174. See *supra* note 128 and accompanying text.

175. See Bruce Barnard, *Ireland Ponders Future Tax Break*, J. COM., Jan. 8, 1997 at 22C (relating Ireland is already discussing how to replace the 10% manufacturer's relief tax set to expire in 2010).

176. *Id.*

177. See *Ireland, Mighty Midget*, *supra* note 37, at 46 (acknowledging that while Ireland may have high unemployment and become ineligible for EU structural funds in the future, it implemented its industrial policy in time to keep its economy sound into the future).

178. Barnard, *supra* note 175, at 22c.

of EU aid reduction.<sup>179</sup> Additionally, EU funding is not scheduled to be cut off completely and will be phased out according to Ireland's future economic progress.<sup>180</sup>

Because foreign investment makes up such a strong part of Ireland's economy and counts for a large amount of local employment, it is fairly certain that Ireland will continue to maintain a foreign business-friendly environment far into the future and will take decisive government action in the areas of greatest concern to U.S. companies.<sup>181</sup>

#### IV. CONCLUSION

Ireland recognizes that as unemployment rates in Europe begin to rise, competition from other European nations will increase for U.S. high-tech investment.<sup>182</sup> Ireland continues to tout its proximity to European markets, its overall economic strength, its young and educated workforce, and the ten percent tax relief.<sup>183</sup> Ireland's commitment to U.S. high-tech recruitment is sound. The importance of these companies to its economy has not been overlooked.

The prediction that Ireland will continue to be one of the most chosen sites for U.S. high-tech investment continues to be a likely one. The tax rate is not set to expire until the year 2010 and the labor shortage has not yet had any widespread effects.<sup>184</sup> Ireland boasts the highest returns on investment in all of Europe as well as one of the fastest growing economies.<sup>185</sup> The combination of all of these factors together makes Ireland an attractive site and will likely entice high-tech companies to its isle in the future.

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179. See *id.* (relating a senior economist at the Economic & Social Research Institute, an independent think tank, predicts that Ireland will be able to keep its economy healthy despite the future cuts in EU structural funds).

180. *Id.*

181. Brown, *supra* note 87. Foreign investment plays a very large part in Ireland's economy compared to other European Union member countries. *Id.* It accounts for two-thirds of manufacturing exports, 55% of manufacturing output and 45% of manufacturing employment. *Id.*

182. See Bruce Barnard, *Emerald Isle Dazzles Foreign Investors Beyond Low Taxes and Incentive Grants*, J. COM., Dec. 12, 1996, at 12B (relating the IDA recognizes the competition from abroad because of increasing unemployment levels there and that Ireland will strengthen its efforts to recruit U.S. business). England, Scotland, and Wales have been engaged in heavy competition with Ireland to secure high-tech investment. *Id.* Saxony in Germany, the Lorraine region in France, and Switzerland are also strong competitors for foreign high-tech investment industry. *Id.*

183. See *Ireland Becomes a European Beachhead*, *supra* note 62; see also Smith, *supra* note 28 (providing even with potential adjustments to the 10% tax relief and less available workers, U.S. computer company Dell represented that it would not affect their decision to stay in Ireland). Dell cited that Irish workers had taken to the American corporate culture well, and was very pleased with worker performance. *Id.*

184. See *supra* note 86 and accompanying text.

185. See *supra* notes 10-12 and accompanying notes.